stance and mistaken self-confidence combine they have won complete recognition in a rigid rule of nullification, while either of these elements standing alone has won but partial recognition, in the rule of particular equities.

It must be conceded that the problems herein discussed are somewhat more complex than this analysis would indicate. There are elements in them other than those discussed. See the article on "Penalties and Forfeitures," by William H. Lloyd, in 29 HARV. L. REV. 117. And there are certain features of the law which seem not to fit into the scheme at all. For example, the transactions which, upon lines of distinction none too well settled (see the little note of some six hundred pages in L. R. A. 1916 B, 18 ff.), are held to be conditional sales rather than equitable mortgages, these always involve the fool's paradise, and very often involve duress of circumstance, yet the letter of the agreement is enforced. And we only partially remove the inconsistency when we say that substantially all the hard cases are taken care of by throwing them, on one ground or another, into the mortgage category. All these difficulties are admitted, yet it is hoped that the foregoing analysis throws a little light into a dark corner.

E. N. D.

CONSIDERATION AS SOMETHING NOT GIVEN STRICTLY IN EXCHANGE FOR THE PROMISE.—In discussing the requirements for an enforceable promise, Justice Holmes said: "But the other elements are that the promise and the detriment are the conventional inducement each for the other. No matter what the actual motive may have been, by the express or implied terms of the supposed contract, the promise and the consideration must be the motive each for the other in whole or at least in part. It is not enough that the promise induces the detriment or the detriment induces the promise if the other half is wanting." *Wisconsin & Michigan Ry. Co.* v. *Powers,* 191 U. S. 379, 386. This statement was not necessary to the decision of the case, but was subsequently approved in *Banning Co.* v. *California,* 240 U. S. 142, 153, and similar views had been expressed previously. *Philpot* v. *Gruninger,* 14 Wall. 570; *Fire Insurance Assn.* v. *Wickham,* 141 U. S. 564.

An early case which pointedly illustrates this theory of consideration is *Kirksey* v. *Kirksey,* 8 Ala. 131. The defendant had written the plaintiff that if she would come to live on his farm he would furnish a place for her to reside. The plaintiff made the change of residence at considerable expense and inconvenience, but it was held that her acts could not provide consideration for the defendant's promise, which was purely gratuitous and revocable. The theory was that while the promisor requested the promisee to give up her home and make the journey for her own good, he did not intend her compliance as the equivalent for his promise. The requested change was simply what has been called "a condition of a gratuitous promise," and it is said that the performance of the condition does not make the promise any less gratuitous. See WILLISTON, CONTRACTS, § 112. A similar case is

reported from Australia. The promisor wrote his brother in England promising to make him a present of 500 pounds upon his arrival in the colonies. The promise was held unenforceable, and the court said that, whatever obligation might be imputed from the plaintiff having made the trip to Australia, was casuistic merely and not legal. *Boord* v. *Boord,* Pelham (So. Aust.) 58. Where the testator had advised the plaintiff to purchase a farm in Pennsylvania and assured him that he would make up the balance of the purchase money which the plaintiff lacked, it was held that the plaintiff's acts in abandoning a journey west and purchasing a farm were not consideration for the promise. The court said: "Conformance to advice is never intended to stand as legal consideration for the kind assurances that accompany the advice, though it is a motive for their fulfillment." *Richard's Executors* v. *Richards,* 46 Pa. 78. See also *Dougherty* v. *Torrence,* 25 Pa. C. C. Rep. 317.

In the recent case of *Briggs* v. *Miller* (Wis., 1922), 186 N. W. 163, the appellant, a public lecturer on applied psychology, advertised that he would pay the amount of loss which was shown to have accrued to anyone as a result of any of appellant's previous business ventures. The appellee produced an upaid note signed by appellant, and claimed payment as advertised. The court held that the promise to pay the loss was without consideration, because the appellant had done no more than accept the offer, suffering no detriment and conferring no benefit; and that such benefit as the appellant would receive through increased public confidence in him would be created by his own act in making the payment. It is submitted that if the promisor expects to receive public favor through paying his old debts, the opportunity of making such payments furnished by the promisee would be of the nature of genuine or real consideration, and the court erred in inquiring as to the reality of the benefit and the detriment involved. If the consideration is genuine the court should not inquire whether it is adequate to the promise. EDWARD JENKS, HIST. DOCT. CONSID. 12. "On the plea of want of consideration the law does not measure, but only ascertains existence." *Bell* v. *Cooper* (Iowa, 1920), 180 N. W. 642. It seems, therefore, that this case can be justified only upon the theory that the benefit derived from the advertising was the motive for the promise, and the increased public confidence as a result of payment of old claims was not contemplated as something to be received in exchange for the promise to pay. The case well illustrates the considerations of policy which should prompt the courts to enforce contracts. It seems that one should be required to perform his contract obligations, when the public belief in his readiness to perform his obligations has adduced to his benefit. In such a case, the court should search diligently to discover a consideration.

It has also been said: "There is the strongest reason for interpreting a business agreement in the sense which will give it a legal support." *Martin* v. *Meles,* 179 Mass. 114. In that case the defendant with other leather manufacturers signed a subscription agreement to contribute $500 to $2000 to a fund to be used by the committee in defraying the legal expenses incurred in defending suits against members of the association. The defend-

ant was held liable, the work undertaken by the committee subsequently to the agreement furnishing the consideration, although it was admitted that this work might have been undertaken without defendant's participation The court said: "When an act has been done which purports expressly to invite certain conduct on his part, and that conduct follows, it is only under exceptional and peculiar circumstances that it will be inquired how far the act in truth was the motive for the conduct." While stating as a general rule that the acts done in reliance upon the promise must have been contemplated by the form of the transaction, as the "conventional inducement, motive and equivalent for the promise," the courts "have gone very great lengths in discovering the implication of such an equivalence, sometimes perhaps even having found it in matters which would seem to be no more than conditions or natural consequences of the promise." This court had previously held that the effort and expenditures of trustees appointed subsequently to the defendant's subscription furnished consideration for the defendant's promise to contribute to the building of a church. *Sheldon* v. *Fletcher,* 168 Mass. 413. It is seen that the invited consequences of the promise in these cases differ from those in *Briggs* v. *Miller, supra,* only in the fact that the results were actual detriments to the promisees, while in that case there was a benefit to the promisor and only a technical detriment to the promisee. Where an English school district council issued a circular announcing a resolution that all teachers who should enlist would be paid their civil salaries while in the service, it was held that a teacher who enlisted could recover. *Davies* v. *Rhondda District Urban Council,* 87 L. J. R. (K. B.) 166, 16 MICH. L. REV. 640. In such a case it is clear that the promisor's primary object was one of patriotism, and the case is analogous to *Kirksey* v. *Kirksey, supra,* concerning which it was said that the promise was one to make a gift upon condition. While the case of *Devecmon* v. *Shaw & Devries,* 69 Md. 199, has been questioned as an authority because it was decided by default, the court therein committed itself to the declaration that expense undergone in reliance upon an offer prompted probably by a gratuitous impulse would furnish consideration for the promise to pay for a trip to Europe. Where an intestate had promised to pay his niece $5000 toward the purchase of a farm in the state, it was held that the purchase of the farm in reliance upon this promise provided consideration to make the promise enforceable. *Berry* v. *Graddy,* 1 Metcalf (Ky.) 553. It was held that the acts of a man in giving up his employment in a mill and moving upon a farm were consideration to support the promise of his son to purchase the farm for him, conditioned upon these acts. *Bigelow* v. *Bigelow,* 95 Me. 17. Where the defendants, advertising the efficacy of their smoke ball to prevent influenza, offered to pay 100 pounds to any person who contracted influenza after purchasing a smoke ball and using it as directed for two weeks, and the plaintiff complied with the terms of the offer, it was held that the plaintiff could recover. *Carlill* v. *Carbolic Smoke Ball Co.,* [1893] 1 Q. B. 256. It is probable, however, that the advertising received from the published offer was the motive for the offer to pay the

100 pounds, and purchasing the smoke ball, using it for two weeks, and contracting influenza were not contemplated as furnishing a *quid pro quo* in exchange for the promise. Where the defendant entered into a written agreement to pay his daughter $2500 a year upon her marriage to her fiance, the promise was held enforceable over the contention that only a gift was intended. The fact that the promise was in writing was held to be an indication that the marriage was regarded as consideration for the promise, and the court said that it was induced to find a consideration in this case because the policy of the law favored marriage settlements. *De Cicco* v. *Schweizer,* 221 N. Y. 431. In *Schoenmann* v. *Whitt,* 136 Wis. 332, the plaintiff was given the exclusive right to sell real estate, with no consideration stated in the agreement. The defendant himself sold the property during the period stipulated, and it was held the plaintiff could not recover a commission only because he had failed to furnish consideration for the exclusive agreement by not endeavoring to sell the property. But in a recent case with very similar facts, in which the plaintiff did exploit the property for sale, a recovery was granted. Although the agreement expressed no consideration, and was said by the court to have been purely unilateral and to have imposed no obligations upon the plaintiff when made, still the plaintiff by performing services which were only impliedly contemplated converted that unilateral agreement into a binding contract. *Hughes* v. *Bickley,* 205 Ala. 619. It is thus seen that many courts, in the interest of the sanctity of promises, indicate a laudable effort to modify the rule that consideration must be something given strictly in exchange for the promise. C. E. B.

DELEGATION OF LEGISLATIVE POWER—ADOPTION BY STATE OF FEDERAL PROHIBITION LAWS.—A bill was proposed in the Massachusetts General Court by the operation of which all laws made and to be made by Congress concerning the enforcement of the Eighteenth Amendment would be incorporated automatically into the law of Massachusetts. An opinion on the bill was requested. *Held,* that it would be contrary to the constitution of the commonwealth, that the legislative power is vested exclusively in the General Court except so far as it is retained in the people by the initiative and referendum provisions, and that it could not be delegated or surrendered as proposed. *In re Opinion of Justices* (Mass., 1921), 133 N. E. 453.

One of the established maxims of the law is that those to whom a power to exercise an authority has been given may not delegate it to others unless the power to delegate it has also been conferred. This legal principle is based upon the implied intention of the one who confers the power that it shall be exercised only by the person or body of persons to whom it is primarily delegated. It should be noticed that when the doctrine is applied as a restriction upon legislative bodies it rests upon implication only, for nowhere is it expressly commanded by the organic law that delegated powers shall not be re-delegated. It is well to observe, moreover, that the power to re-delegate, though it may be given expressly, as in the case of the initiative and referendum amendments, may also be implied. This is